

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Darwin McArthur, Jr.,

No. 14-cv-2012 (MJD/LIB)

Plaintiff,

v.

REPORT AND RECOMMENDATION

U.S. Department of Agriculture,

Defendant.

This matter comes before the undersigned United States Magistrate Judge upon the routine supervision of the cases that pend before the Court, pursuant to a general assignment made in accordance with the provisions of 28 U.S.C. § 636.

Plaintiff commenced the present action on June 18, 2014, by filing his Complaint. (Compl. [Docket No. 1]). More than 120 days after Plaintiff filed his Complaint, Plaintiff had not provided proof of service of a summons and Complaint on Defendant U.S. Department of Agriculture. Accordingly, the Court issued an Order notifying Plaintiff that the Federal Rules of Civil Procedure require plaintiffs to demonstrate proof of service “within 120 days after the complaint is filed, [or] the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). Pursuant to Rule 4(m), the Court directed Plaintiff to provide proof of service or demonstrate good cause for an extension of time to serve Defendant, failing which the Court would recommend dismissal for failure to effect proper service and failure to prosecute. (Order [Docket No. 2]).

On November 12, 2014, the Court received a letter from Plaintiff requesting additional time to effect service. (Letter to Magistrate Judge [Docket No. 4]). The Court granted Plaintiff’s

request and directed Plaintiff to serve Defendant and provide proof of service thereof to the Court by no later than **Monday, December 15, 2014**. (Order [Docket No. 5]). The Court again forewarned Plaintiff that if he failed to comply with the Court's directives, the Court would recommend that the Defendant be dismissed for failure to effect proper service and failure to prosecute. (*Id.*)

December 15 has come and gone, and Plaintiff has neither provided proof of service nor articulated good cause as to why the Court should grant him an additional extension of time to do so. Therefore, pursuant to Rule 4(m), **IT IS HEREBY RECOMMENDED** that Plaintiff's Complaint, [Docket No. 1], be **DISMISSED without prejudice**, for failure to effect service and for lack of prosecution, unless Plaintiff, within the 14-day period to object to this Report and Recommendation, provides proof of service or demonstrates good cause for an extension of time to serve Defendant. *See Widtfeldt v. Daugherty*, U.S. Ct. App. No. 14-1907 (8th Cir. December 16, 2014) (*per curiam*, unpublished) (holding that the district court did not abuse its discretion in dismissing the action without prejudice when plaintiff failed to establish that he had properly effected service within 120 days after filing his complaint).

DATED: December 19, 2014

s/Leo I. Brisbois
 Leo I. Brisbois
 U.S. MAGISTRATE JUDGE

N O T I C E

Pursuant to Local Rule 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties by **January 2, 2015**, a writing that specifically identifies the portions of the Report to which objections are made and the bases for each objection. A party may respond to the objections by **January 16, 2015, or within fourteen days** of service thereof. Written submissions by any party shall comply with the applicable word limitations provided for in the Local Rules. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. This Report and

Recommendation does not constitute an order or judgment from the District Court, and it is therefore not directly appealable to the Court of Appeals.